

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

CATHERINE ANN STONE

Respondent

v.

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES

Appellant

DOCKET NUMBER **WD71813**

DATE: August 17, 2010

Appeal From:

Circuit Court of Cole County, MO
The Honorable Richard G. Callahan, Judge

Appellate Judges:

Division Three: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Attorneys:

Glen D. Webb, Jefferson City, MO

Counsel for Appellant

Attorneys:

Mariam A. Decker, Columbia, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**Catherine Ann Stone, Respondent,
v.
Missouri Department of Health and Senior Services, Appellant**

WD71813

Cole County

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Two nursing home employees alleged that Catherine Ann Stone, a nurse, attempted to force feed medication to a resident. Stone was terminated and the Missouri Department of Health and Human Services (DHSS) conducted an investigation. DHSS found that Stone's treatment of the resident constituted abuse and notified Stone that she would be placed on the employee disqualification list (EDL) for eighteen months. Stone sought judicial review and the circuit court reversed DHSS's decision.

AFFIRMED.

Division Three Holds:

DHSS's decision to place Stone on the EDL must be supported by competent and substantial evidence. A person is placed on the EDL when it is determined that he or she has "knowingly or recklessly abused or neglected a resident" while employed in a facility. Abuse is defined as "the infliction of physical, sexual, or emotional injury or harm."

Whether someone has sustained emotional harm may be established by his or her reaction to the situation. Expert testimony is generally not required to establish emotional harm because the emotional harm of an ordinary person is usually in the fact finder's common experience. Testimony established that the resident was aggressive and combative prior to Stone attempting to administer medication. DHSS found that because her combativeness and yelling escalated in response to the incident, this demonstrated that the resident was harmed.

The record would support such a finding had this been an ordinary person. However, the resident was mentally disabled and had dementia. Determining whether a mentally disabled resident with dementia sustained emotional harm from the feeding incident was beyond the common experience of the fact finder. The particular circumstances of this case and the mental condition of the resident required expert testimony to establish whether the resident's reaction during the forced medication incident was a manifestation of an emotional injury or harm.

Therefore, we affirm the circuit court's judgment reversing DHSS's decision.

Opinion by: Thomas H. Newton, Judge

August 17, 2010

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